

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

**F19a**

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APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal number.....A-3-SLO-03-017; Barker-Delp SFD
Applicant.....Glenn Barker & Sharon Delp
AppellantsKen Renshaw; Lila Evans
Local government.....San Luis Obispo County
Local decision.....Approved with conditions (January 14, 2003)
**Project location.....St. Thomas Ave. (approx. 600 ft. southeast of St. James), Cambria,
San Luis Obispo County (APN(s) 023-163-014, 023-163-031).**
**Project description.....Construct a single family residence with a 2,240 sq. ft. footprint and
3,795 sq. ft. of gross structural area.**
**File documents.....San Luis Obispo County Certified Local Coastal Program (LCP);
Local Permit # D000482P.**
Staff recommendation...No Substantial Issue

EXECUTIVE SUMMARY

San Luis Obispo County approved the construction of a 3,795 square foot single-family residence in the community of Cambria, San Luis Obispo County. New development in Cambria being permitted by the County is generally limited to those projects that the Cambria Community Service District (CCSD) committed to serving prior to the declaration of the water supply emergency, otherwise referred to as “pipeline projects”. The proposed development that is the subject of this appeal is an example of such a pipeline project.

At the December 2002 Commission meeting in San Francisco, the Commission established criteria that would be required in order to approve the remaining “pipeline” projects. Namely, the Commission required the inclusion of a special water retrofitting condition that is designed to offset the increase in water demand within the service area in an amount equal or greater to the anticipated water use of the project. At that same meeting, the Commission instructed Staff to work with the County to incorporate the special retrofitting condition into all “pipeline” project approvals as a way to avoid future appeals.

The appellants claim that the approved project: (1) is inconsistent with the requirements of the LCP regarding water availability; (2) disregards the Commission’s requirement for “prior to issuance retrofitting”, and; (3) will apply a more lenient standard of approval than has previously been applied by the Commission due to the timing and method of special condition compliance.



**California Coastal Commission
April 11, 2003 Meeting in Santa Barbara**

Staff: J. Bishop Approved by:

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These contentions do not raise a substantial issue of conformity of the County-approved project with the certified LCP because: (1) the County-approved project retains the relevant provisions of the Commission's previously approved special retrofit condition for "pipeline" water projects; (2) the purpose of the provision, which is to achieve "no net increase in water demand", is maintained through the County-approved project, and; (3) the County-approved project will not impact coastal resources

Staff recommends that the Commission, after conducting the public hearing, determine that **no substantial issue** exists with respect to this project's conformance with the certified San Luis Obispo County Local Coastal Program (LCP) and declines to take jurisdiction over the coastal development permit for the project.

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Exhibits

1. Project Vicinity Map
2. Site Plan and Elevations
3. County Conditions of Approval
4. Appellants' Contentions
5. Applicants Statement

I. Local Government Action

The County of San Luis Board of Supervisors unanimously approved the proposed development on January 14, 2002, subject to 26 conditions (see Exhibit 3 for the County's conditions). The County also approved a Mitigated Negative Declaration under the California Environmental Quality Act.

II. Summary Of Appellants' Contentions

Please see Exhibit 4 for the full text of the appeal.



The appellants, Ken Renshaw and Lila Evans, have appealed the final action taken by the County on the basis that approval of the project does not impose the Commission's adopted water retrofitting provision for determining water availability under the LCP. They also contend that the manner in which condition compliance is carried out through the County's process is inadequate and undermines the purpose of the retrofitting condition.

III. Standard of Review for Appeals

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable to the Coastal Commission because it involves development within Sensitive Resource Areas designated by the LCP; specifically, Monterey Pine forest (Terrestrial Habitat).

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program in order to issue a coastal development permit. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not located between the first public road and the sea.

IV. Staff Recommendation On Substantial Issue

MOTION: *I move that the Commission determine that Appeal No. A-3-SLO-03-017 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of **No Substantial Issue** and the adoption of the following resolution and findings, and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the



appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-SLO-03-017 presents no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Recommended Findings and Declarations

A. Project Location and Description

The project is located on the north side of St. Thomas Avenue, approximately 600 feet southeast of St. James Way, in the Community of Cambria in the North Coast planning area. The project site is a triple lot of approximately 10,443 square feet (please see Exhibit 2 for project plans). The County approval authorizes the construction of a new single-family residence with a 2,240 square feet footprint, and 3,795 square feet of gross structural area. The overall height of the proposed residence is 28 feet, as measured from the average natural grade.

B. Substantial Issue Determination

1. Public Services

a. Relevant Local Coastal Program Provisions

As required by Public Works Policy 1, all new development must demonstrate that there is sufficient water supply to serve the development:

Public Works Policy 1: Availability of Service Capacity

New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable...

This policy is implemented by CZLUO 23.04.430:

CZLUO Section 23.04.430 - Availability of Water Supply and Sewage Disposal Services

A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as



provided by this section . . .

b. County Action

On January 14, 2003 the San Luis Obispo County Board of Supervisors approved the Minor Use/Coastal Development Permit D000482P subject to 26 conditions. The staff report indicates that water is to be provided by Cambria Community Service District (CCSD), which extracts underflow (shallow groundwater) from both Santa Rosa and San Simeon Creeks. The County made no specific findings with regard to water availability, but rather, states that the CCSD's Intent-to-Serve letter is document attesting to the District's capabilities. The County accepted this document as evidence of adequate water to serve the proposed project.

On December 12, 2002, the Commission heard on appeal two "pipeline projects" (Hudzinski and Monaco). The Commission approved both projects subject to a special retrofitting condition that offsets the additional water withdrawals caused by the project. Only with the inclusion of this special condition could the Commission approve the proposed developments. At that hearing, the Commission stated that future Cambria "pipeline" projects incorporating the same conditions would not warrant an appeal and would receive a Commission staff recommendation of "no substantial issue" if appealed by another party.

In this case, the County has included the special retrofitting provision as a condition of approval. However, the County condition requires evidence of the offsetting retrofit "prior to the issuance of the building permit" approved by the "Planning Director", rather than "prior to issuance of the coastal development permit" approved by the "Executive Director". According to the County, the language was modified to allow condition compliance to be performed through the existing local government process.

c. Analysis

1. History/Background

1977 Coastal Development Permit

The Coastal Commission has been concerned with the lack of water to support new development in Cambria since the adoption of the Coastal Act. As early as 1977, in a coastal permit to allow the Cambria Community Services District (CCSD) to begin drawing water from San Simeon Creek, the Commission expressed concern about overdrafting this groundwater basin. In that permit, the Commission limited the urban service areas for this new water supply and identified the maximum number of dwelling units that could be served as 3,800¹. A condition of that 1977 coastal development permit stated that:

use of all District wells on Santa Rosa Creek shall be discontinued when water production from San Simeon Creek has been established. Any continued permitted use of the Santa Rosa Creek wells shall be limited to the

¹ Application 132-18.



supplementing of San Simeon Creek well production in years when the 1230 acre feet cannot be safely removed. Except in the emergency situations defined below, the withdrawal of water from Santa Rosa Creek shall not exceed 260 acre feet during the dry season which normally extends from July 1 through November 20 and shall not exceed 147 acre feet per month at any other time. At no time shall the combined withdrawal from San Simeon Creek and Santa Rosa Creek exceed the 1230 acre feet annually. In addition, the following emergency situations shall be permitted: fire or any emergency use authorized by the State Water Resources Control Board or the State Health Department. Until the San Simeon Creek wells are functioning, no new water permits shall be permitted in the District.

LCP Certification

When the Land Use Plan of the County's LCP was certified in 1984, the concern remained that there was inadequate water to serve existing parcels within Cambria. The findings regarding Cambria stated that based on the land uses and intensities designated in the LUP for subdivided and un-subdivided land, 8,150 dwelling units could be developed; however, it was estimated that the community of Cambria had adequate water and sewage capacities to serve 5,200 dwelling units (in 1984). The findings continue to state:

Buildout of the existing subdivided parcels alone within the USL [Urban Services Line] would result in a number of dwelling units for which there is inadequate sewer and water capacity. Clearly the community does not have adequate services to supply the LUP proposed development within the USL without severely overcommitting its water supplies and sewage treatment facilities.

1998 North Coast Area Plan

More recently, the Commission evaluated available water supply for Cambria in its review of the County's North Coast Area Plan update. After evaluating the availability of water in San Simeon and Santa Rosa Creek, the Commission found that existing development (1997) may be overdrafting these creeks, and adversely affecting wetlands and riparian habitats. Thus, the Commission adopted findings and a suggested modification that would require completion of three performance standards prior to January 1, 2001: completion of an instream flow management study for Santa Rosa and San Simeon Creek; completion of a water management strategy which includes water conservation, reuse of wastewater, alternative water supply, and potential off stream impoundments; and cooperation of the County and CCSO to place a lot reduction ballot measure before the Cambria electorate. If these standards were not performed by January 1, 2001, the modification required a moratorium on further withdrawals from San Simeon and Santa Rosa Creeks.



Although the County never accepted the modified amendment and this development is therefore not subject to the moratorium provision, the severity of the measures proposed reflects the gravity of the community's future if development continues to be permitted at its existing rate.

2001 Periodic Review

The Coastal Act requires that every certified LCP be reviewed periodically to determine whether the LCP is being effectively implemented in conformity with the policies of the Coastal Act. On July 12, 2001 the Commission adopted the *Periodic Review of the San Luis Obispo County LCP*. In this report, the Commission made a number of recommendations related to environmentally-sustainable urban development in Cambria. In terms of specific findings, the Preliminary Report highlights the problems of short and long-term growth in Cambria. The report concludes that Cambria has serious concerns related to limited groundwater supply and the protection of sensitive habitat areas with respect to the sustainability of existing and future development in an area with limited water supplies. The Commission adopted the following recommendation in its July, 2001 Periodic Review action:

Recommendation 2.13. Continue implementation of the 1% growth rate in Cambria until 1/1/02, after which time coastal development permits for new development that would require a new water connection or that would otherwise create additional water withdrawals from Santa Rosa or San Simeon Creeks should not be approved unless the Board of Supervisors can make findings that (1) water withdrawals are limited to assure protection of instream flows that support sensitive species and habitats; (2) there is adequate water supply reserved for the Coastal Act priority uses of agricultural production, and increased visitors and new visitor-serving development; (3) a water management implementation plan is incorporated into the LCP, including measures for water conservation, reuse of wastewater, alternative water supplies, etc., that will assure adequate water supply for the planned build-out of Cambria or that will guarantee no net increase in water usage through new water connections (e.g. by actual retrofitting or retirement of existing water use); (4) substantial progress has been made by the County and the CCSD on achieving implementation of buildout reduction plan for Cambria; and (5) there is adequate water supply and distribution capacity to provide emergency response for existing development.

CCSD Water Moratorium

Most recently, the Cambria Community Service District (CCSD) has taken more programmatic steps towards resolving the unsustainable development trends in Cambria. On October 25, 2001 the CCSD Board of Directors considered whether to pursue the declaration of a water shortage emergency. At that meeting, the Board of Directors determined that sufficient evidence existed to consider the declaration of a water shortage emergency based on an inability to accommodate the anticipated growth of the community in the near future. At that same meeting, an additional 38 intent-to-serve letters were approved by the CCSD Board of Directors.

On November 15, 2001 the CCSD Board of Directors declared a water emergency. Part of this



action included not allowing any additional intent-to-serve letters to be issued (i.e. anything beyond those that were issued during the October 25, 2001 meeting). The following list includes additional actions adopted by the CCSD to accompany the declaration of a water emergency:

- Reactivate the retro-fit program as contained in the CCSD Ordinances 1-98, 2-98, and 2-99;
- Investigate additional opportunities to implement water saving measures through the retro-fit program;
- Enforce Ordinance 4-2000 (water waste provision);
- Identify any additional opportunities to improve Ordinance 4-2000;
- Request that the County of San Luis Obispo adopt restrictions on the installation of landscaping within the Cambria CSD to minimize the impact or irrigation on water supplies;
- Develop a plan to ensure the enforcement of all restrictions and regulations regarding water usage in Cambria;
- Pursue the development of water master plan;
- Evaluate the current rate structure and develop changes and improvements.

Through the declaration of a moratorium on new water connections, the CCSD has taken a critical step in curbing short-term development potential in Cambria. Since October 25, 2001 no new intent-to-serve letters have been issued by the CCSD. The moratorium effectively limits new development in Cambria until the uncertainty with respect to water supplies can be resolved. However, the moratorium does not limit those projects declared “in the pipeline” by the CCSD. “Pipeline projects” are defined as projects that have development applications accepted for processing by the County, and are also accompanied by an intent-to-serve letter or some other form of evidence that the CCSD has committed to providing the development with water.

As of August 21, 2002, the CCSD has indicated that there were a number of “intent-to-serve” letters currently outstanding from the CCSD that have yet to complete the County permit process. These outstanding commitments include both residential and commercial development totaling 102 “Equivalent Dwelling Units” (EDU’s), or approximately 9,000 gallons of water per day. The total average current daily water production by the CCSD equals 720,000 gallons of water. According to these CCSD’s figures, the water use attributable to these outstanding intent-to-serve letters represent an approximate 1.25% increase in total water supplies needed to serve these outstanding commitments. There are an additional 45.7 inactive “grandfathered” EDU allocations, 13 single-family active meters in place, but not activated, and 27 connection permits that are being issued for recently processed building permits. Thus, the total increase in water use associated with “pipeline projects” can be estimated to be significantly greater than that represented by the projects holding “intent to serve” letters.



2. Substantial Issue Analysis

The Commission has previously recognized the serious water supply situation in Cambria, and raised concern that currently-available water supplies are not sufficient to support existing and future development without harm to sensitive habitats. This issue has been thoroughly discussed in both the North County Update and the Periodic Review of the Implementation of San Luis Obispo County's Local Coastal Program (see History/Background discussion above).

Specifically, Public Works Policy 1 requires that:

New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development...Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable. Permitted development outside the USL shall be allowed only if it can be serviced by adequate private on-site water and waste disposal systems.

On December 12, 2002, the Commission heard on appeal two "pipeline projects" (Hudzinski and Monaco)². The Commission approved both projects subject to a special retrofitting condition that offsets the additional water withdrawals caused by the project. At that hearing, the Commission also stated that future Cambria "pipeline" projects that incorporate the same conditions would not warrant a Commission appeal and would receive a Commission staff recommendation of "no substantial issue" if appealed by another party.

The appellants raise similar contentions with respect to water availability that were previously addressed in the Monaco and Hudzinski projects. Only with the inclusion of the special retrofitting condition could the Commission approve the proposed developments consistent with LCP Public Works Policy 1. This interim approach is limited only to the finite number of projects deemed in the "pipeline". It is important to recognize that given these circumstances, use of the retrofitting condition for projects not in the "pipeline" isn't appropriate and should not be approved.

The appellants contend that even with the included retrofit condition the County disregarded the Commission's provision for "prior to issuance" retrofitting. This contention is not entirely on point. Put very simply, the compliance trigger for the Commission differs from that of the County. The Commission only issues *one* permit for a project, a coastal development permit. When the Commission approves a coastal development permit, it will often only be issued *after* compliance with various special conditions. In other words, in the Commission's process, if condition compliance is to occur before development is started, condition compliance must occur prior to the issuance of the CDP. On the other hand, San Luis Obispo County issues *two* permits

² A-3-SLO-02-050 (Monaco); A-3-SLO-02-073 (Hudzinski).



that must be obtained before work on a project can start. The first permit is the coastal development permit that is issued at the time it is approved, or following the close of the appropriate appeal period. The second permit the county issues is the building permit. In the County process, if condition compliance is to occur prior to commencement of development, compliance must be demonstrated prior to the issuance of the building permit. According to the County, this is the earliest stage following a discretionary approval where compliance with special conditions can be demonstrated. Thus, the County's approval of this project simply adapts the language of the Monaco and Hudzinski projects to fit with the manner in which condition compliance is effectively implemented in their process. The net effect is the same at the County as at the Commission, construction cannot begin until the retro fit condition has been met.

Likewise, there is no substantive difference between the County's condition that the Planning Director approve condition compliance or the Commission's parallel condition that the Executive Director sign off the various conditions. The San Luis Obispo Planning Director is the County counterpart of the Commission's Executive Director and thus, in the *County's* process is the appropriate person to review and approve condition compliance. The result will be the same-- a planning professional will review condition compliance to ensure that the requirements of the condition are properly carried out.

d. Substantial Issue Conclusion

In conclusion, no credible evidence has been offered that demonstrates that the County's condition compliance process would result in a different substantive outcome than the Commission's condition compliance process. Indeed, either process requires that development, such as the single family home that is the subject of this appeal, cannot go forward until the permittee meets the requirements of the retro fit condition and can ensure that their project will not require any net increase in water use. As discussed in an earlier section of this report, the Commission has found that projects in Cambria that do not increase water demand will not adversely affect coastal water resources and, as conditioned to comply with the retro fit program can be served by the water district. Therefore, no substantial issue is raised by this appeal with respect to water availability or water resources.

